

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today
(1) was not written for publication in a law journal and
(2) is not binding precedent of the Board.

Paper No. 17

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JEAN-FRANCOIS HOTTE

Appeal No. 97-4155
Application 08/309,403¹

ON BRIEF

Before MEISTER, ABRAMS, and MCQUADE, Administrative Patent Judges.

ABRAMS, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the decision of the examiner finally rejecting claims 2, 4-10, 12 and 13, which constitute all of the claims remaining of record in the application.

¹Application for patent filed September 20, 1994.

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The appellant's invention is directed to a system for removably installing a truck equipment onto a truck frame. The subject matter before us on appeal is illustrated by reference to claim 12, which has been reproduced in an appendix to the Brief (Paper No. 13).

THE REFERENCES

The references relied upon by the examiner to support the final rejection are:

Filipoff et al. (Filipoff)	2,789,715	Apr. 23, 1957
Tarrant, Sr.	3,623,621	Nov. 30, 1971
Jones	4,109,810	Aug. 29, 1978

THE REJECTIONS

The following rejections stand under 35 U.S.C. § 103:

(1) Claims 2, 4, 7, 8, 12 and 13 on the basis of Filipoff and Tarrant.²

²We note that claim 4 depends from claim 1, which has been canceled. This error should be corrected.

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(2) Claims 5, 6, 9 and 10 on the basis of Filipoff,
Tarrant and Jones.

The rejections are explained in the Examiner's Answer.

The opposing viewpoints of the appellant are set forth in
the Brief.

OPINION

In a rejection under 35 U.S.C. § 103, the examiner bears the initial burden of presenting a *prima facie* case of obviousness (see *In re Rijckaert*, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993)), which is established when the teachings of the prior art itself would appear to have suggested the claimed subject matter to one of ordinary skill in the art (see *In re Bell*, 991 F.2d 781, 783, 26 USPQ2d 1529, 1531 (Fed. Cir. 1993)). It is our opinion that the examiner has not met this burden, and we therefore will not sustain the rejections. Our reasons for arriving at this conclusion follow.

With regard to claim 12, it is the examiner's opinion that Filipoff discloses all of the claimed subject matter,

except that it teaches supporting the truck equipment on an inclined portion of a pit, instead of by the leg means required by the claim. However, the examiner points out that "Tarrant shows a similar system . . . which has a mechanical support" in the form of legs, and concludes that it therefore would have been obvious to modify the Filipoff system by utilizing legs instead of the inclined wall of the pit, in view of the teaching of Tarrant (Answer, page 3). We do not agree.

The mere fact that the prior art structure could be modified does not make such a modification obvious unless the prior art suggests the desirability of doing so. See *In re Gordon*, 733 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed. Cir. 1984). Filipoff discloses a truck body that is placed in a pit so that debris can easily be loaded into it (column 1). To facilitate removal of the truck body from the pit, one side of the pit is formed into an inclined ramp (119a), and the truck upon which the body is to be loaded is equipped with a tiltable bed (T), and has ramp rails (94) extending from the rear. As shown in Figure 1, the bed and the extending rails

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are tilted to match the angle of the inclined side of the pit, and the truck body is pulled out of the pit and onto the truck. Filipoff lacks "leg means for supporting the front end of the truck equipment above the ground" at a given height and at a given angle, as is set forth in claim 12. Filipoff also lacks the required

actuator means . . . to raise the front end of the [truck] ramp means and tilt said ramp means substantially at said given angle so as to enable engagement of a lower rear portion of the tilted ramp means with an upper front portion of the guide means [of the truck equipment] by moving the truck frame rearwardly toward the truck equipment (emphasis added).

Thus, the Filipoff system differs in concept from that set forth in claim 12, in that it does not move the truck rearwardly into a position wherein the lower rear portion of the tilted ramp engages the upper front portion of the equipment, but simply pulls the equipment up onto the truck.

Tarrant discloses a loading system wherein the truck equipment to be loaded is elevated above the ground, supported by front and rear pairs of legs, and the truck is driven completely under it so that the entire under-surface of the equipment is engaged by the entire upper surface of the truck

(see Figures 1 and 2). No hauling means for sliding the equipment on a tilted ramp is necessary.

We fail to perceive any teaching, suggestion or incentive in either of the references which would have led one of ordinary skill in the art to modify the Filipoff system in the manner proposed by the examiner. To support the truck body of Filipoff on a pair of legs would destroy the essence of the Filipoff invention which, in our view, would have acted as a disincentive to one of ordinary skill in the art to make the change. In addition, neither of the references incorporates the loading concept expressed in the claim, and therefore even if they were properly to be combined, the structure recited in claim 12 would not have been suggested. That is, whereas Filipoff teaches no overlapping of the truck ramp and the equipment to be loaded and sliding the equipment over the entire length of the ramp, and Tarrant teaches full overlapping and no sliding, in the claimed invention there is partial overlapping and partial sliding.

For the above reasons, it is our conclusion that the combined teachings of Filipoff and Tarrant fail to establish a

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prima facie case of obviousness with regard to the subject matter of claim 12, and therefore we will not sustain the rejection of this independent claim.

Independent claim 13 contains the same limitations as those which were discussed above with regard to claim 12, plus others. It has been rejected on the same grounds, and its rejection cannot be sustained for the same reasons.

The Jones reference, cited for its teaching of using rails instead of wheels as the guide means with regard to dependent claims 5 and 6, and of using axially movable locking means with regard to dependent claims 9 and 10, does not alleviate the shortcomings in the basic combination.

SUMMARY

None of the rejections are sustained.

The decision of the examiner is reversed.

REVERSED

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	Administrative Patent Judge)	
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